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OBSERVATIONS
/

ON THE

PROHIBITION OF MARRIAGE

IN

CERTAIN CASES OF RELATIONSHIP

BY

AFFINITY.

FIFTH EDITION.

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PREFACE.

IN the course of the following sheets, the Writer has more than once ventured to dissent from the opinions of men whose names are justly held in honour. He trusts that his readers will consider that he has not done so without reason ; and he would fain hope, that they will believe him when he declares, that he has in no instance done so without pain. It is well known, that at the period of the Reformation, the number of the restrictions, which had previously existed upon marriage, was considerably reduced : but at that time, and subsequently in the reign of Elizabeth, (as will be seen in the first and second Articles of the Appendix to this work,) the subject of marriage restrictions was surrounded by many serious difficulties, from which it is now free. If it should appear, that, under the pressure of these

difficulties, or the influence of early prepossessions, some of the great and good men whose names are mentioned in these pages, took in some instances an incorrect view of the extent to which it was proper to carry our restrictions upon marriage, the Writer believes that there are many persons in the present day, who will have no desire that these errors should be perpetuated, and consequently many, who will pardon him for having called attention to them, if it shall be found that he has done so, not only with the candour of one who loves truth, but also with the humility of one who knows with how much difficulty it is sometimes found.

ERRATA.

- Page 8, line 27, *for* 'soever' *read* 'whosoever.'
 13, — 28, — 'Prohibition' *read* 'Prohibitions.'
 13, — 29, — 'page 67' *read* 'page 57.'

OBSERVATIONS,

ETC.

IN the 25th year of the reign of Henry VIII an Act was passed prohibiting marriage in certain degrees, in which it seems to have been considered by the framers of the Act to be prohibited by Scripture. This Act was repealed by the Stat. of 28 Henry VIII. c. 7. which enacted in like manner that marriage should not be permitted within certain degrees, which are said to be rehearsed in the Act, and in which it is declared to be prohibited by the laws of God. This Statute is considered by Bishop Gibson and several others to have been repealed by the 1st Mary, c. 1. This, however, was not the case. The only part of the

Act of 28 Henry VIII. c. 7. which was repealed by 1 Mary, c. 1. was that which related to the King's first marriage and the illegitimacy of Queen Mary, and the part of it which related to the prohibited degrees of Marriage remained in force till it was repealed by 1 and 2 Philip and Mary, c. 8. § 17. This latter part of the Statute of 28 Henry VIII. c. 7. is said by Chief Justice Vaughan (*Hill v. Good*, 324, 325) to have been revived by Eliz. c. 1. but this appears to be a mistake, and we believe that no lawyer of the present day considers that any part of the above-mentioned Statute is in force. The next Act relative to the prohibition of Marriage, within certain degrees, was that of the 32 Henry VIII. c. 38. intituled, "An Act concerning Pre-contracts of Marriage, and touching degrees of Consanguinity." The part of this Statute, which related to Pre-contracts of Marriage, was repealed by 2 and 3 Edw. VI. c. 23., and the entire Act was repealed by 1 and 2 Philip and Mary, c. 8. That part of the Stat. of 32 Henry VIII. which related to the prohibited degrees of Marriage was revived, however, by 1 Eliz. c. 1. § 11, 12. and is admitted on all hands to have been in force since that period.*

* See some remarks on the Acts of 25, 28, and 32 Henry VIII. relative to Marriage, Appendix, Art. (A.) p. 53.

By the Act of 32 Henry VIII. c. 38. as thus revived by 1 Eliz. c. 1. it is declared to be lawful for all persons to marry, "that be not prohibited by God's law to marry;" but the Act nowhere declares *what persons* are prohibited by God's law to marry; and it is not easy, therefore, to declare in what cases marriage is forbidden by the Statute. It forms, however, no part of the design of the writer of the following pages to dwell upon the difficulties connected with the explanation of the Act under consideration. It has been generally supposed to prohibit marriage, not only in every case which is specified in the 18th chapter of Leviticus, but in every case within the degrees in which the cases there specified are found; and the correctness of such an opinion it is not our intention to impugn. On the supposition that it is correct, we may assume that the Table of Prohibited Degrees, which was put forth in the year 1563 by Archbishop Parker, accurately represents the cases in which marriage is prohibited by the laws of this country. By this Table, a man is forbidden to marry the following persons:—

CONSANGUINITY.

1. HIS GRANDMOTHER.
2. — FATHER'S SISTER.
3. — MOTHER'S SISTER.
4. — MOTHER.
5. — DAUGHTER.
6. — SISTER.
7. — SON'S DAUGHTER.
8. — DAUGHTER'S DAUGHTER.
9. — BROTHER'S DAUGHTER.
10. — SISTER'S DAUGHTER.

AFFINITY.

1. HIS GRANDFATHER'S WIFE.
2. — WIFE'S GRANDMOTHER.
3. — FATHER'S BROTHER'S WIFE.
4. — MOTHER'S BROTHER'S WIFE.
5. — WIFE'S FATHER'S SISTER.
6. — WIFE'S MOTHER'S SISTER.
7. — STEP MOTHER.
8. — WIFE'S MOTHER.
9. — WIFE'S DAUGHTER.
10. — SON'S WIFE.
11. — WIFE'S SISTER.
12. — BROTHER'S WIFE.
13. — SON'S SON'S WIFE.
14. — DAUGHTER'S SON'S WIFE.
15. — WIFE'S SON'S DAUGHTER.
16. — WIFE'S DAUGHTER'S DAUGHTER.
17. — BROTHER'S SON'S WIFE.
18. — SISTER'S SON'S WIFE.
19. — WIFE'S BROTHER'S DAUGHTER.
20. — WIFE'S SISTER'S DAUGHTER.

A marriage in any of the above cases was not, however, *void*, prior to the year 1835, but merely *voidable*. If parties married in any of the cases above-mentioned, the marriage remained valid so long as its validity was unquestioned; and if such a marriage were not annulled in the lifetime of the parties who had contracted it, nothing could afterwards invalidate it. It was, however, in the power of either of the parties who had contracted a marriage of this kind, or, in their lifetime, of any person whatsoever who had an interest in the dissolution of the marriage, to get it set aside; and thus the marriage of parties who were living together in mutual love, respected by all around them, might at any moment be annulled at the instigation of an interested individual, and the offspring of the marriage be reduced to a state of illegitimacy. In order to remedy the evils thus incident to the parties who had contracted, and the children who had sprung from such marriages as these, Lord Lyndhurst introduced a Bill into Parliament in the year 1835 for the purpose of legalizing all marriages which had been contracted prior to that period, within the prohibited degrees of Affinity, and rendering it impossible that they should be afterwards set aside on the ground of the previous relationship of the parties. This Bill subsequently

passed into a law, by which it was enacted, "That marriages celebrated before the passing of the Act (31st August, 1835) being within the prohibited degrees of Affinity, should not thereafter be annulled for that cause by any sentence of the Ecclesiastical Court, unless pronounced in a suit which was depending at the time of passing the Act." * Now the cases in which marriages had been contracted, previously to the passing of the Act, within the prohibited degrees of Affinity as set forth in the table of Archbishop Parker, were with,—

A Wife's Sister,

A Wife's Brother's Daughter, and

A Wife's Sister's Daughter,

and the marriages in these three cases were therefore legalized by the Act under consideration.

It cannot, then, be supposed for a moment that the members of the Legislature, who concurred in the passing of the above Act, were of opinion that marriage is forbidden by the laws of God in the cases we have mentioned; or, instead of legalizing the marriages which had been contracted in these cases, and so binding it upon the parties to continue together to their live's end *in an antisciptural and unholy union*, they would, we cannot doubt, have felt it to be their duty to pass an Act for the im-

* Act of 5 and 6 Wm. IV. c. 54, § 1.

mediate dissolution of all such marriages and the separation of the parties, who had contracted them, from further cohabitation. The Acts of 25 and 28 Henry VIII. after prohibiting marriage within certain degrees, in which it was considered by the framers of the Acts to be prohibited by Scripture, enacted, that in case any persons had married within those degrees, and were "*not separate from the bonds of such unlawful marriage, that then every such person so unlawfully married should be separate by the definitive sentence of Archbishops, Bishops, and other Ministers of the Church of England within the limits of their jurisdiction and authorities ;*" and we feel assured, that the intelligent and high-principled individuals, who composed the Legislature of this country in the year 1835, would have considered themselves bound to reiterate this injunction with respect to the persons, whose marriages in the three above-mentioned cases of Affinity were then brought under their notice, had they conceived that Christians are forbidden by the laws of God to contract marriage in these cases.

It seems, however, to have been the opinion of the Divines who drew up our Table of Prohibited Degrees, that marriage is prohibited by Scripture in all the cases which are mentioned in it; for in the "Admonition," which was

originally prefixed to Archbishop Parker's Table, called an "Admonition to all such as shall intend to enter the state of matrimony godly and agreeably to law," persons intending to marry were enjoined not to contract with such persons as are thereafter expressed, nor with any of like degree "against the laws of God and the laws of this realm," in which words it was, at least, *implied*, that persons marrying in any one of the cases mentioned in the Table would marry "*against the laws of God.*"* And that marriage is prohibited by Scripture in all the cases specified in Archbishop Parker's Table has been maintained, not only by Divines, but also by Civil and Ecclesiastical lawyers of great reputation. "We take the degrees of marriage prohibited by God's law (says Ch. J. Vaughan) to be the Levitical degrees expressed, or necessarily implied, in the 18th chapter of Leviticus, upon parity of reason or argument *a fortiori.*"† According to these authorities, therefore, the

* The original Preface to the Table seems to have gradually fallen into disuse, and the words which are generally found prefixed to it in the present day, both in the copies of it which are hung up in our churches, and in those which are given in our Books of Common Prayer, are as follow:—"A Table of Kindred and Affinity, wherein soever are related are forbidden *by Scripture* and our laws to marry together."

† Vaughan, in *Harrison v. Burwell*, 240. See also 2 Lev. 245, 3 Keb. 660, and 2 Lutw. 1075.

Act of 5 and 6 William IV. c. 54. legalized marriage in three cases in which it is prohibited by Scripture. But, as we have already said, this could not possibly have been the opinion of those who concurred in the passing of the Act in question.

We propose in the following pages to examine the grounds upon which the decision of the framers of our Table of Prohibited Degrees with respect to the unscripturalness of marriage in the three cases we have mentioned, is supposed to rest ; and in so doing we may perhaps discover some of the reasons which induced the members of the Legislature in 1835 to take a different view of the subject, and to consider, as we feel sure they did, *that marriage is not prohibited by Scripture with a deceased Wife's Sister, or with her Brother's or Sister's Daughter.*

In entering upon the examination of this subject we are immediately met by the question of the obligation of the Levitical law upon Christians. Ch. J. Vaughan and the other advocates of the restrictions contained in our Table of Prohibited Degrees agree in referring to the 18th chapter of Leviticus as the ground on which they assert, that we are forbidden by Scripture to contract marriage in any of the cases specified in the Table. Now we will allow, *for the sake of argument*, that it can be

shewn satisfactorily, that marriage with a Wife's Sister, and with her Brother's or Sister's Daughter is forbidden in the 18th chapter of Leviticus; but unless it can be shewn also, that the Law of Moses is obligatory upon Christians, it can with no justice be asserted, that we are forbidden to marry in these cases. The Jews, to whom these prohibitions were originally given, were doubtless bound to observe them in every instance; but if the Judicial Law of Moses be not binding upon those who live under the Christian dispensation, then neither are these prohibitions binding upon them, forming as they do a portion of that law, and not being enjoined in any part of the New Testament. Now what is the opinion of the most eminent divines upon this point?

“Whatsoever things the Law enjoins (writes St. Basil to Diodorus,) it enjoins to those under it, otherwise we should be subject to circumcision, and the observance of the Sabbath, and abstinence from certain kinds of food.”*

“The Law commenced in the time of Moses, (says Irenæus,) and of course ended in that of John, when Christ came to fulfil it.”†

In the second Chapter of the *Ductor Dubitantium*, or Rule of Conscience, in which he

* Basil. Op. Tom. III. p. 361. Edit. Paris.

† Irenæus Adv. Hæres. Lib. iv. c. 8.

treats of "the Law of Nature, or of all mankind, as it is commended, digested, and perfected by our supreme Lawgiver Jesus Christ," Jeremy Taylor lays down the following Rules :—

1. "When the law of Jesus Christ was established, the Old Testament or the law of Moses did no longer oblige the conscience.

2. "The Ceremonial Law of Moses is wholly void.

3. "The Judicial Law of Moses is annulled or abrogated, and retains no obliging power, either in whole or in part, over any Christian prince, commonwealth, or person."

In discussing this last 'Rule,' he writes as follows: "Either the Judicial Law was *wholly civil*, or it was *part of the religion*. If it was *wholly secular and civil*, it goes away with that Commonwealth to whom it was given; if it was *part of the religion*, it goes away with the Temple, with the Lawgiver's authority by cession to the greater, with the Covenant of Works, with the revelation and reign of the Messiah; and though the instances of this law, proceeding from the wisest Lawgiver, are good guides to Princes and Commonwealths, where the same reasons are applicable in like persons of things and in equal capacities of the subjects, *yet it is wholly without obligation.*" *

* Jeremy Taylor, Ductor Dub. Book ii. c. 2.

"It is certain, and can bear no debate (writes Bishop Burnet,) that the Mosaical dispensation, as to all the parts of it, that are not of their own nature moral, is determined and abrogated by the Gospel. The decisions which the Apostles made in this matter are so clear, and for the proof of them, the whole tenor of the Epistles to the Galatians and the Hebrews is so full, that no doubt can rest concerning this with any man who reads them.*

"It cannot be denied, (says Archbishop Whately) that he (St. Paul) does speak frequently and strongly of the termination of the Mosaic Law, *and of the exemption of Christians from its obligations*, without ever limiting and qualifying the assertion, without hinting at a distinction between one part which is abrogated, and another which remains in full force."†

It would be easy to multiply quotations upon this subject, but the nature of this work restrains us from so doing, neither is it necessary for us to do so. There are, we believe, few persons, if any, in the present day, who have considered this point with attention, who are disposed to think, that the law of Moses is obligatory upon ourselves, who, by God's mercy are in the enjoyment of the light and liberty

* Burnet on Article vii.

† Essays on some of the Difficulties in the Writings of St. Paul, pp. 144, 145.

of a better dispensation. But, if we are not prepared to maintain that the Mosaic Law is binding upon Christians, we must admit, that the Levitical prohibitions with respect to marriage, which form a part of that law, and which are not enjoined by the New Testament, are not binding upon them.*

But, it may perhaps be said, that, although the Judicial Law of Moses is not obligatory on those who are living under the Christian dispensation, yet, in framing a system of restrictions upon marriage, the Legislature of a Christian country was bound to adopt that which had been imposed by God himself upon the Jews. This however is more than we are prepared to admit. We think, that before our Legislators imposed upon us the same restrictions upon this subject which were formerly imposed upon the Jews, they should have been able to shew that our situation was similar to that of the Jews at the period in question; and that there was then as great need of these restrictions, as there was when they were first enjoined. Now at the time that Moses gave his marriage laws to the Jews, they had lost, by a long residence amongst an idolatrous and sensual people, much of that godly fear, which had

* See farther remarks on the Levitical Prohibition, Appendix, Art. (B.) p. 67.

filled the hearts and restrained the passions of their more pious ancestors ; and they were moreover on their way to a land which was “spewing out” its inhabitants for the abominations by which they had defiled it. It may then have been necessary—indeed we cannot doubt, that it was necessary, to impose upon the Jews at such a time many restrictions which would not have been needful, had there been more of the spirit of true religion amongst them, or had the circumstances, in which they were about to be placed, been less unfavourable to the maintenance of domestic purity ; but it would surely be hard to shew that the same restrictions are at this moment needful for ourselves, living, as we do, beneath the light of the Gospel, and in circumstances so widely different from those in which the Jews were about to be placed when these restrictions were imposed upon them. But, even if we should go so far as to admit, that it was expedient to embody in our marriage laws the same restrictions which had been imposed upon the Jews in one of the darkest periods of their moral history, we should, nevertheless, not be justified in declaring that such restrictions had been imposed upon us by the laws of God ; all that we could assert with justice in such a case would be—that we had voluntarily imposed

upon ourselves the same restrictions with respect to marriage, which the Almighty had once imposed upon the Jews.

But what shall be said in defence of the doctrine, that we are prohibited by the laws of God from marrying in the three cases under consideration, *if it shall appear that the Jews themselves were not prohibited from marrying in these cases?* The portion of Scripture, in which the prohibitions with respect to marriage occur, is the eighteenth chapter of Leviticus. Let us examine it with the attention it deserves. The first seventeen verses of the chapter are as follow :—

1. And the Lord spake unto Moses, saying,
2. Speak unto the children of Israel, and say unto them, I am the Lord your God.
3. After the doings of the land of Egypt, wherein ye dwelt, shall ye not do : and after the doings of the land of Canaan, whither I bring you, shall ye not do ; neither shall ye walk in their ordinances.
4. Ye shall do my judgments, and keep my ordinances to walk therein : I am the Lord your God.
5. Ye shall therefore keep my statutes and my judgments, which if a man do, he shall live in them : I am the Lord.
6. None of you shall approach to any that is near of kin to him, to uncover their nakedness : I am the Lord.
7. The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover : she is thy mother, thou shalt not uncover her nakedness.
8. The nakedness of thy father's wife, shalt thou not uncover : it is thy father's nakedness.

9. The nakedness of thy sister, the daughter of thy father, or daughter of thy mother, whether she be born at home or born abroad, even their nakedness shalt thou not uncover.

10. The nakedness of thy son's daughter, or of thy daughter's daughter, even their nakedness shalt thou not uncover: for their's is thine own nakedness.

11. The nakedness of thy father's wife's daughter, begotten of thy father, she is thy sister, thou shalt not uncover her nakedness.

12. Thou shalt not uncover the nakedness of thy father's near kinswoman.

13. Thou shalt not uncover the nakedness of thy mother's sister: for she is thy mother's near kinswoman.

14. Thou shalt not uncover the nakedness of thy father's brother, thou shalt not approach to his wife: she is thine aunt.

15. Thou shalt not uncover the nakedness of thy daughter-in-law: she is thy son's wife; thou shalt not uncover her nakedness.

16. Thou shalt not uncover the nakedness of thy brother's wife, it is thy brother's nakedness.

17. Thou shalt not uncover the nakedness of a woman and her daughter, neither shalt thou take her son's daughter, or her daughter's daughter, to uncover her nakedness: for they are her near kinswomen; it is wickedness.

(Leviticus xviii. 1—17.)

In ver. 1—5, Moses is represented as having been directed by God to command the Israelites to abstain from the practices of the land of Egypt, in which they had dwelt, and of the land of Canaan, whither they were going, and to observe the commandments and ordinances of the Lord their God.

Ver. 6 contains a Prohibition expressed in general terms :—

“ NONE OF YOU SHALL APPROACH TO ANY THAT IS NEAR OF KIN TO HIM TO UNCOVER THEIR NAKEDNESS : I AM THE LORD.”

Ver. 7—17 specify the particular instances comprised in the General Prohibition given in ver. 6. Assuming that by the expression ‘ *uncovering the nakedness* ’ of a person, we are to understand that *marriage* with such a person is spoken of, the Israelite was forbidden in these verses to marry his,

		Verse.
CONSANGUINITY.	MOTHER - - - - -	7
	FATHER'S SISTER - - - - -	12
	MOTHER'S SISTER - - - - -	13
	SISTER (BY THE SAME FATHER AND MOTHER) -	9
	SISTER (BY THE SAME MOTHER, BUT A DIFFERENT FATHER) - - - - -	9
	SISTER (BY THE SAME FATHER, BUT A DIFFERENT MOTHER) - - - - -	11
	DAUGHTER - - - - -	17
	SON'S DAUGHTER - - - - -	10
	DAUGHTER'S DAUGHTER - - - - -	10
AFFINITY.	FATHER'S WIFE - - - - -	8
	FATHER'S BROTHER'S WIFE - - - - -	14
	BROTHER'S WIFE - - - - -	16
	SON'S WIFE - - - - -	15
	WIFE'S BROTHER - - - - -	17
	WIFE'S DAUGHTER - - - - -	17
	WIFE'S SON'S DAUGHTER - - - - -	17
	WIFE'S DAUGHTER'S DAUGHTER - - - - -	17

In all this we find, however, no prohibition of marriage in the three cases under consideration, viz. with a Wife's Sister, or with her Brother's or Sister's Daughter. But we are told by the defenders of Archbishop Parker's Table, that, because marriage is forbidden with a Brother's Wife by ver. 16. it must be conceived to be forbidden also, *by parity of reason*, with a Wife's Sister; and that, because it is forbidden with a Father's Brother's Wife by ver. 14. it must be conceived to be forbidden also, *by parity of reason*, with a Wife's Brother's Daughter, and with a Wife's Sister's Daughter. But what authority, it has been well asked, do we possess for this remarkable extension of these restrictions? In ver. 6, we find a General Prohibition against marriage with 'near kindred.' In the following verses seventeen cases are mentioned as being included in the General Prohibition. But the advocates of the doctrine we are considering tell us, that these are not all. "*It is evident (they say,) that three other cases are comprised in the General Prohibition, though Moses omitted to mention them.*"

. In examining this subject it must, we think, immediately strike every enquirer as a very remarkable fact—*if it be one*—that in specifying, in obedience to the Divine command, and with great precision of language, several relatives,

with whom it was declared to be unlawful for an Israelite to contract marriage, Moses should have left it to the ingenuity of his countrymen to discover, that there were three other relatives, with whom it was equally unlawful for them to enter into the bonds of wedlock. This surely, is not the manner in which the Deity has usually dealt with his creatures, and it is scarcely possible to believe, that the Israelites could have been expected by God to conclude, that more was intended by these prohibitions than was expressly stated by the mouth of his servant Moses. Had the General Prohibition in ver. 6 stood alone,—i. e. had no particular instances, in which it was to be observed, been given,—the case would have been different; it would then, doubtless, have been the duty of those to whom this General Prohibition was given, *to endeavour to discover the particular cases comprised in it*; but a General Prohibition against marriage with near kindred having been given them, and several instances enumerated in which this Prohibition was to be observed, and nothing being added to lead the Israelites to suppose that there were any other instances included in it, it was only natural and reasonable that they should consider, that if they observed the Prohibition in the instances which

were specified, they would do all that was required of them.

This, however, is not all that we have to advance upon this point. It may be further remarked, as Michaelis has justly observed, that there is another argument against the extension of these prohibitions in the manner which has been noticed, in this circumstance,—that Moses “ does not appear to have framed his marriage laws with any view to our deducing conclusions from them; *for if this were his view, he cannot be acquitted of having made several very useless repetitions in them.* For what reason had he for example, after forbidding marriage with a Father’s Sister, to forbid it also with a Mother’s; if this second prohibition was included in the first, and if he meant without saying a word on the subject to be understood as speaking, *not of particular marriages, but of DEGREES.*

Again, “ Moses (as the Author from whom we have already quoted, observes,) has given his marriage laws in two different places of the Pentateuch, viz. in both the 18th and 20th Chapters of Leviticus; but in the latter of these passages we find only the very same cases specified, which had been specified in the former. Now had they been meant merely as

examples of DEGREES OF RELATIONSHIP, it would have been more natural to have varied them; and if it had been said, for instance, on the first occasion, 'Thou shalt not marry thy Father's Sister,' to have introduced on the second, the converse case, and said, 'Thou shalt not marry thy Brother's Daughter.' This however is not done by Moses, who in the second enactment, just specifies the Father's Sister, as before, *and seems therefore to have intended that he should be understood as having in his view no other marriages than those which he expressly names, unless we choose to interpret his laws in a manner foreign to his own meaning and design.*" *

The most cogent argument against the extension of these prohibitions by the doctrine of '*parity of reason*' remains, however, to be yet noticed. Moses forbids marriage with a Brother's Widow; "therefore," say those who advocate the extension of his prohibitions in the manner we have noticed, "he, by parity of reason, forbids marriage with a deceased Wife's Sister." But, before we give our assent to this inference, let us look at the 18th verse of the Chapter

* Michaelis on the *Laws of Moses* (Smith's Translation), vol. ii. pp. 119, 120.

under consideration. This verse is in the original as follows :—

וְאִשָּׁה אֶל־חֲתָנָהּ לֹא תִקַּח לְצִדָּהּ לְנִלּוֹת עִרְוָתָהּ עִלְיָהּ
: עֲרִיבָהּ

And it is thus rendered by the Seventy :—

Γυναῖκα ἐκ' ἑδελφῆ αὐτῆς οὐ λήψῃ ἑνὶ ζῆλον, ἀποκαλύψαι τὴν
ἡσυχμοσύνην αὐτῆς ἐκ' αὐτῆς, ἕτι ζώσης αὐτῆς.

The Vulgate version is as follows :—

Sororem uxoris tuæ in pellicatum illius non accipies, nec revelabis turpitudinem ejus, *adhuc illa vivente.*

Observing the order of the original as nearly we can, the verse may be thus rendered—

“ And a woman to her sister thou shalt not take for hostility or jealousy (i. e. so as to produce hostility or jealousy) for the uncovering of her nakedness, upon or beside her, *in her life.*”

Or, according to our common version—

“ Neither shalt thou take a Wife to her Sister, to vex her, to uncover her nakedness beside the other, *in her lifetime.*”

The Israelite was hereby forbidden to marry the Sister of his Wife *in his Wife's lifetime.*

What inference, we may ask, could he possibly have drawn from such a prohibition but this—that he was at liberty to marry his Wife's Sister *after his Wife's death*. Being commanded not to marry his Wife's Sister in the lifetime of his Wife, that he might not vex her, or render her jealous by so doing, he must naturally and reasonably have concluded that he would be at liberty to take this step, *when his Wife herself had ceased to exist, and could not be vexed or rendered jealous by his taking it*. We have here then an insuperable argument against the doctrine of those who maintain that the 16th verse of this Chapter forbids marriage not only with a Brother's Wife, but also, by implication, with a Wife's Sister. We have said that the verse we have been considering furnishes *an insuperable argument* against such a conclusion ; and we think it will be admitted, that we are justified in speaking of it in such terms ; for, although the advocates for the extension of these prohibitions, by the doctrine of 'parity of reason,' have exerted their utmost skill in endeavouring to put a different sense upon this verse from that which we have conceived it to bear, we believe that there is not a single Hebrew scholar or Biblical critic of any eminence in the present day, who does not advocate the *literal* interpretation of the verse,

*and regard it as containing a manifestly implied permission to marry a deceased Wife's Sister.**

It is evident, therefore, that there are insurmountable objections against the extension of the Levitical prohibitions to the case of marriage with a deceased Wife's Sister; and with even still less shew of reason has it been attempted to extend them to marriage in the other two cases which have been specified; viz. with a Wife's Brother's Daughter and with a Wife's Sister's Daughter.

It is by no means impossible that the venerable prelates of our Church, and the other members of the Legislature, before whom this subject was brought in the year 1835, may have had other, and, perhaps, still stronger reasons than those which have been adduced, for considering that marriage is not forbidden by Scripture in the three cases we have mentioned; if, however, they had no other than these, we think that every unprejudiced examiner of this subject will be of opinion, that they were fully justified in coming to such a conclusion; and having arrived at it, we believe it will be readily admitted, that they did only what justice required of them, in passing an Act to

* See some additional remarks on Levit. xviii. 18. in Appendix, Art. (C.)

[illegible]

the prohibited degrees of Affinity, should not thereafter be annulled for that cause by any sentence of the Ecclesiastical Court, was followed by another, which enacted, that all marriages which should thereafter be celebrated between persons within the prohibited degrees of Consanguinity or Affinity should be "absolutely null and void to all intents and purposes whatsoever." It was stated, indeed, by several of the members of the House of Commons who took part in the debates on Lord Lyndhurst's Bill, that it would be open to any member, who disapproved of the enactment proposed in the second clause of the Bill, to come forward in a future session of Parliament, and propose a relaxation of it with respect to any one or more of the particular cases included in it; and a period seems to be near at hand, in which it is probable that a proposition of this nature will be submitted to the Legislature. A large number of highly respectable individuals, whose feelings are deeply interested in this question, are about to present a petition to Parliament praying for the repeal of the restrictions now existing upon marriage, with a deceased Wife's Sister, with her Brother's Daughter, and with her Sister's Daughter,—in which three cases they conceive, that they have the authority of the Legislature itself for asserting, that marriage is not prohi-

bited by Scripture. This petition will be accompanied by another to the same effect from a large number of Clergymen of the Established Church, who have no personal interest in the matter, but are influenced solely by motives of a public nature, regarding the restrictions upon marriage in these cases as unjust in themselves and productive of very injurious effects upon the morals of the community.* Two of the ablest of the prelates of the Church (his Grace the Archbishop of Dublin, and the Lord Bishop of Llandaff) nobly regardless of the obloquy to which the defenders of marriage in any of these cases have been hitherto unjustly exposed, and animated solely by regard for the feelings of others and the interests of morality, have promised that the petitions we have mentioned shall have their active support; that of other prelates may be reasonably expected; the zealous co-operation of many of the most intelligent members of both Houses of Parliament has been promised; and we cannot allow ourselves to believe, that so just a cause thus ably supported is destined to fall to the ground.

It is the opinion of lawyers of considerable

* This latter Petition was signed in the short space of five weeks by upwards of a hundred Parochial Clergymen.

eminence that it is by no means certain, that there is any law in force at this moment prohibitory of marriage in the cases we have mentioned. The Act of 5 and 6 William IV cap. 54. nowhere declares what is to be understood by the term 'prohibited degrees,' and if the Act of the 28th of Henry VIII. cap. 7. was not revived by 1 Eliz. cap. 1. (and it would we conceive be impossible to shew that it was), there would be no Act of Parliament in force, in which we could find a definition of the term in question, and it might in such a case be very difficult to prove, that marriage with a deceased Wife's Sister, or with her Brother's or Sister's Daughter, is prohibited by the Act of 5 and 6 Will. IV. cap. 54. The individuals, however, who are personally interested in this matter, decline to carry their wishes into effect under the circumstances by which the question is at present surrounded. They are not disposed to contract marriage with the persons, with whom they are desirous of allying themselves, by means of any evasion of an Act of the Legislature, or by the evasion of the *intention* of any such Act; but being of opinion, that marriage is not forbidden by Scripture in the cases in which they are desirous of contracting it, they are about to come forward and humbly petition the Legislature to withdraw the restrictions which are

supposed to be in force against marriage in these cases.

It is said, however, by many persons, that the removal of the restrictions upon marriages of this kind would be followed by very injurious effects upon the morals of society. It is to be observed, however, that this is a bare assertion, which is unsupported by evidence of any kind. And from whom, we may fairly ask, does it proceed? From the most enlightened,—from the most conscientious,—or from the most religious members of the community? No; for of the far greater proportion of these we believe that it may with safety be asserted, that, *when convinced that marriage is not prohibited by Scripture in the cases in question*, they would not be found desirous of prohibiting it on any other ground. Pure in their own lives and intentions, they would not without reason suspect others of impurity in act or purpose; and just and liberal in their views, they would feel that they were not warranted in imposing unscriptural restrictions upon these marriages and thereby entailing life-long misery upon many respectable individuals, merely because it is asserted by some persons, that the removal of our restrictions upon these marriages will be productive of unhappiness and immorality. From whom then, we ask again, is it to be expected that the

objection to the removal of our restrictions upon these marriages, on the ground of its probable evil effect on the morals of society, will chiefly proceed? To no slight amount, we believe, from the least enlightened portion of the community,—from men of narrow minds, whose conclusions have been formed, not under the influence of an earnest desire to know what reason suggested, or Scripture taught upon this subject, but under the influence of unreasonable prejudices or unreasonable fears. And a great number of the objectors to these marriages on the ground we have mentioned, will, we think it probable, be found amongst those persons, who, from the past or present impurity of their own lives, or of the lives of those into whose society they have been cast, have no faith in the existence of human virtue, and conceive that morality is to be taught, and right feelings propagated, by Act of Parliament. But it is not surely by the opinions of such persons as these, that the Legislature of this great country will consent to be guided in dealing with a question of the deepest interest to a large and increasing number of the most estimable subjects of the State. Let us however pause for a moment, to consider the nature of this objection against the removal of our restrictions upon the marriages in question. We are told, that we

ought to retain our restrictions upon these marriages, because the removal of them would in all probability be followed by very injurious effects on the morals of society. What is this, but to say,—that, if the laws of our country permitted a man to marry his Wife's Sister or Niece, there are men who would in that case *deliberately* seek to seduce them from the paths of virtue. Now this we cannot but regard as a libel upon human nature. We cannot prevail upon ourselves to believe that an individual exists, who would attempt to gain the affections of his Wife's Sister or Niece, and then “to soil her virgin purity,” *because he might at some future day, when his wife herself should have ceased to exist, marry the wretched object of his unholy lust.* We cannot believe, that a being so unutterably base, is to be found upon the globe on which we live; but we feel sure, that if there be such a villain, he will not be prevented from attempting to accomplish his atrocious purpose, by the existence of an Act of Parliament, which declares, that he shall never *marry* the woman whom he has destroyed. It has been also said, that a Wife's Sister or Niece might, perhaps, less firmly resist the attempts which might be made upon her virtue by the husband of her sister or her aunt, if she knew that he might, some day or

other, have it in his power to marry her. On behalf of the delicate and upright and pure-minded women of England, we repel with scorn the insinuation contained in this observation ; for what is this but to say, that a woman will allow herself to be prevailed on to commit adultery with the husband of her Sister or her Aunt, because, *on consideration of the subject*, she perceives, that, when that Sister or Aunt is dead, she may become the occupant of her place. To legislate with a view to the prevention of such a crime as this, would be an insult to every unmarried woman in the country, who is not absolutely lost to every feeling of purity and honour ; and would, moreover, be as useless with respect to the bad, as it would be offensive to the good. Whether we look then to the man or to the woman, we must perceive, that the objection which has been advanced against the removal of our restrictions upon the marriages in question on the ground of the probability of its being productive of immorality, is utterly without force. We are unable to prevent a villain from attempting, or from accomplishing the ruin of his Wife's Sister or Niece by *retaining* these prohibitions ; and we should not render the occurrence of such a circumstance, in any rank of life, in the slightest degree more probable than it is at this moment by *removing*

them. Rare, indeed, have hitherto been the instances in which such a crime has been committed ; not, in consequence of the existence of an Act of Parliament preventing the possibility of marriage between the parties, for until the year 1835 no such Act existed,—but, in consequence of the influence of principle upon the good, and of the fear of universal public reprobation upon the profligate : and we believe that these restraints would again exert the same degree of force, were our prohibitions upon these marriages withdrawn. Nor can it be said, that we are without grounds to justify us in such an opinion ; for it would assuredly be impossible to shew, how the virtue of a Wife's Sister or Niece would be exposed to greater temptations, were the prohibitions in question withdrawn, than is at this moment that of her cousin or her friend, either of whom may be a frequent resident in her house, and with either of whom her husband is at liberty to contract marriage after her own decease. Moreover, the marriages under consideration are permitted, we believe, either with or without dispensation, in every country of Europe, Protestant as well as Roman Catholic, except our own ; and as the power to contract them was never found to have an injurious effect on the state of morals in any of those countries, we, surely, have no

reason to conceive that it would suffer in our own, were the same amount of liberty allowed us in this matter.

But there are some persons, who, without going so far as to assert, that the restrictions under consideration are necessary for the preservation of morality, consider that the removal of them would produce much domestic discomfort. Such persons are of opinion, that, if it were practicable for a husband to marry his Wife's Sister or Niece, suspicions and jealousy would often arise in the mind of the Wife, and that the freedom of intercourse, which at present exists between a husband and his Wife's female relatives, would be to a great amount destroyed. Now if it were certain that this would be, in some instances, the result of withdrawing our prohibitions upon the marriages in question, we think it would be at least very doubtful whether it would constitute a sufficient reason for continuing them, their existence not being warranted by the word of God, and being known to be productive of a large amount of unhappiness and immorality. We believe, however, that the apprehensions we have noticed are altogether groundless. It may be remarked in the first place, that, prior to the passing of Lord Lyndhurst's Act in 1835, a husband often lived in

great familiarity with his Wife's Sister and Niece without exciting any unpleasant sensations in the bosom of his Wife, although there was no law in existence which prevented him from marrying either of these relatives after his Wife's death; from which circumstance we conceive that we are justified in inferring, that a husband might live on familiar terms with these persons without any diminution of his Wife's peace of mind, were our present restrictions upon his marriage with them removed. It may be said, indeed, that, prior to the passing of Lord Lyndhurst's Act, such marriages were liable to be at any moment set aside, and were consequently not very frequently contracted; but we conceive that there is nothing in these facts to prevent our entertaining the opinion which we have just expressed, because we hold, that it would be impossible to shew, why a man should not live on intimate terms with his Wife's Sister and Niece, were marriage with them practicable after his wife's decease, and good and valid *for ever*, with as little risk of exciting suspicion in her mind, as when his marriage with them was practicable, but exposed to the risk of being good and valid *only for a time*, as was the case under the former state of the law. Moreover, this is not all that we have to advance upon this point. Here

again we can appeal, in proof of the soundness of our conclusions, to the effect of the liberty which is enjoyed in this matter in other countries. The inhabitants of Germany and the Netherlands (to say nothing of those of other countries, in which these marriages are permitted,) are at least as domestic as ourselves; and the intercourse of the husband with his wife's family has never been the less free or the less innocent in consequence of his possessing the power to contract marriage in the cases under consideration; and there is, surely, nothing which can lead us to suppose, that the enjoyment of the same amount of liberty on this subject would be productive in our own country of results of a different description.

A third objection, which has been sometimes urged against the relaxation of our restrictions with respect to one of the marriages we are considering, viz., that with a deceased Wife's Sister, has been founded on the reputed practice of the early Christians on this point. It has been said, that this marriage was prohibited in the first ages of Christianity, and that we must, therefore, be right in prohibiting it. This argument, undoubtedly, appears to possess much force; and it is right that it should be dispassionately considered, and that all the weight should be attributed to it, to which,

upon examination, it shall be found to be entitled. It cannot be denied that one of the Canons, which have been termed 'Apostolical,' declares, that the individual who married two sisters should not be admitted amongst the Clergy.* If we should allow, what can never be proved—that these Canons are genuine, and that they were received, at some period or other, by a considerable part of the Christian Church, it would be our duty to endeavour to ascertain at what time this was really the case ; and this is a point, which it would be difficult, not to say impossible, to determine satisfactorily. It is known, that they were considered by Daillé, on no slight grounds, to have been the production of some impostor subsequently to the year of our Lord 450 ; and by none of the more eminent of those divines, who have assigned to them an earlier date, have they been supposed to have appeared, as a body of Canons, before the beginning of the fourth, or, at the very earliest, the middle of the third century. If we should take the last-mentioned date to be the correct one, we shall still assign the appearance of these Canons to a period, in which it is well-known, that the disposition to exalt the

* 'Ο δύο ἀδελφὰς ἀγαγόμενος, ἢ ἀδελφίδην οὐ δύναται εἶναι κληρικός.
Can. 18 (Labbé).

merits of celibacy and to discountenance second marriages was in very active exercise in the Christian Church. The inclination which we may possess to regard the particular Canon under consideration as a correct representation of the feelings of Christians of the Apostolic age upon the point in question is, moreover, materially diminished by the contents of other of these Canons. It is true, that one of these Canons enjoins, that the man who married two Sisters should not be admitted amongst the Clergy; but it is equally true, that another declares, that he, who after baptism contracted a second marriage with any person whatever, should also be considered incapable of holding any sacred office; * whilst a third is equally severe upon the man who married a widow.† Omitting, however, further notice of these Canons, which, after what has been said with respect to the time of their appearance and the spirit which they manifest, cannot be regarded as

* 'Ο δυσὶ γάμοις συμπλακείς μετὰ τὸ βάπτισμα, ἢ παλλακὴν κτησάμενος, οὐ δύναται εἶναι ἐπίσκοπος, ἢ πρεσβύτερος, ἢ διάκονος, ἢ ὅλως τοῦ καταλόγου τοῦ ἱερατικοῦ.

Can. 16 (Labbé).

† 'Ο χήραν λαβὼν, ἢ ἐκβεβλημένην, ἢ ἑταῖραν, ἢ οἰκέτιν, ἢ τὴν ἐπὶ σκηνῆς, οὐ δύναται εἶναι ἐπίσκοπος, ἢ πρεσβύτερος, ἢ διάκονος, ἢ ὅλως τοῦ καταλόγου τοῦ ἱερατικοῦ.

Can. 17 (Labbé).

entitled to much consideration with reference to the point in question, we proceed to examine the weight which appears to be due to the declarations of St. Basil on this subject. In a letter to Diodorus he affirms, that, in consequence of ordinances handed down to them by holy men, it was customary amongst the Christians of his day to consider a union with a Wife's Sister as no marriage, and to refuse to the parties, who had contracted such a union, admittance into the body of the church, till they were separated from each other.* It certainly appears from these observations, that, even before St. Basil's own time, marriage with a deceased Wife's Sister had been disapproved of in the Christian Church. Before, however, we look upon this fact as indicative of what ought to be, either our own sentiments or practice, with respect to marriage with a Wife's Sister, we must consider, that it appears, on the authority of the same Father, that exactly the same feeling prevailed

* Πρῶτον μόνον, ὃ μέγιστον ἐπὶ τῶν τοιούτων ἐστὶ, τὸ παρ' ἡμῖν ἔθος, ὃ ἔχομεν προβάλλειν, νόμου δύναμιν ἔχον, διὰ τὸ ἐφ' ἁγίων ἀνδρῶν τοὺς θεσμοὺς ἡμῖν παραδοθῆναι. Τοῦτο δὲ ταυούτων ἐστίν· ἐάν τις πάθει ἀκαθαρσίας ποτὲ κρατηθεῖς, ἐκπέσῃ πρὸς δυεῖν ἀδελφῶν ἄθεσμον κοινωνίαν, μήτε γάμον ἡγείσθαι τοῦτον, μήθ' ὅλως εἰς ἐκκλησίας πλήρωμα παραδέχεσθαι πρότερον, ἢ διαλυῖσαι αὐτοὺς ἀπ' ἀλλήλων.

in the Church at that period, with respect to third marriages with whomsoever contracted. From a Canon, which occurs in a letter of St. Basil's to Amphilochius, we learn, that it was customary amongst Christians, even before that time, to consider a third marriage as no marriage at all, (which was exactly the light in which we are told, in the Epistle to Diodorus, that they regarded marriage with a Wife's Sister,) and to look upon it merely as a species of moderated fornication.* Now, if we are bound to adopt the sentiments which prevailed amongst Christians in St. Basil's time with respect to marriage with a deceased Wife's Sister, it would be hard to shew, why we are not bound to adopt those also of an *exactly* similar kind which prevailed with respect to a *third marriage*; indeed, we might go still farther, and say, that it would be in such a case difficult to shew, why we should not be bound to adopt the feelings of a still earlier age with respect to a *second marriage*, and to look upon it as no better than a species of *decorous adultery*, which was the light in which it was regarded by Athenagoras (who lived about A. D. 180,) and the Christians of his

* Τους δὲ τριγάμους ἐν τρισί, καὶ τετράδοι πολλάκις ἔτεσιν ἀφορίζουσιν. Ὅσαμάζουσιν δὲ τὸ τοιοῦτον οὐκ ἔτι γάμον, ἀλλὰ πολυγαμίαν, μᾶλλον δὲ πορνείαν κεκολασμένην.

Can. 4. Epist. Amphilochio de Canonibus.

time.* In the Canon to which we have already referred in the Epistle to Amphilochius, St. Basil tells us, that, before his own time, a third marriage was punished by five years penance; and, by a Canon of the first Council, of whose enactments with respect to marriage we have any authentic account, viz. that of Eliberis, held A. D. 305, exactly the same punishment was appointed for the man who married his Wife's Sister. It appears, therefore, that at this period marriage with a Wife's Sister was regarded as neither less nor *more* criminal than marriage for the third time with any person whatsoever; and, as we have ventured to differ from the Christians of those days with respect to the light in which a third marriage is to be regarded, there appears to be no reason whatever, why we should not differ from them to exactly the same amount with respect to the opinion, which is to be entertained of marriage with a deceased Wife's Sister. Of slight value appears, therefore, to be the sanction, which the sentiments entertained by the early

* Οὐ γὰρ μελέτη λόγων, ἀλλ' ἐπιδείξει καὶ διδασκαλίᾳ ἔργων τὰ ἡμέτερα· ἥ οἷος τις ἐτέχθη, μένειν, ἢ εἶθ' ἐνὶ γάμῳ ὁ γὰρ δεύτερος, εὐπρεπὴς ἐστὶ μοιχεία.

Athenag. Legat. pro Christianis.

See some remarks on this passage in Bishop Kaye's Justin Martyr, p. 213, and the passage of Barbeyrac sur la Morale des Pères (c. iv. § 6) to which the Bishop refers.

Christians afford to our prohibition of marriage with a Wife's Sister, whilst there is *nothing whatever* in aught that we know of their feelings or enactments, which authorizes our prohibition of it in the two other cases which have been mentioned; for, *although the subject of marriage was carefully discussed in several Councils and various restrictions imposed upon it, we have no reason whatever to suppose, that the Christian Church ever once, during the first six centuries, prohibited marriage with a deceased Wife's Brother's or Sister's Daughter.**

Another objection against the removal of our restrictions upon marriage in the three cases under consideration, has been supposed to be furnished by the fact of the existence in this country of a strong feeling against the propriety of these marriages. We are not disposed to deny, that such a feeling does at this moment exist in the minds of several highly respectable and conscientious individuals. We believe, however, that it has arisen entirely from the notion, that marriage in these cases is forbidden by Scripture; and, if it should be admitted, as we conceive it must be, that this is not the fact, it must surely be admitted also, that the

* See a brief Sketch of the Restrictions upon Marriage which have been in force in different periods of the Church, in Appendix, Art. (D.) p. 74.

existence of the feeling in question is not a sufficient reason for continuing our restrictions upon these marriages. Let us suppose for a moment that Archbishop Parker's Table had included the eighteen additional cases in which the Karaites assert that marriage is also forbidden by Scripture, and that the Table, so enlarged, and prefaced by a Statement declaring marriage to be prohibited by Scripture in all the instances specified, had been suspended upon the walls of our Churches, and bound up with our Bibles and Prayer-books,—can any reasonable man doubt, that in such a case the feeling, which now exists against the propriety of marriage in the three instances in question, would have existed against the propriety of it in any of the eighteen additional instances which we have supposed to be introduced into the Table? We conceive, however, that no man will assert, that the existence of such a feeling would have justified the Legislature in retaining a prohibition upon marriage in any of these additional cases after it had been ascertained that there was no ground for affirming that marriage in those cases was forbidden by Scripture; neither, therefore, we conceive, can the existence of such a feeling against marriage in the three cases we have specified be held to be a sufficient reason for retaining our prohibi-

tion of it, if it be clear, as we hold it to be, that we have no authority for asserting, that marriage in these cases is prohibited by Scripture. The feeling, however, which has been admitted to exist, against the propriety of marriage with a deceased Wife's Sister, or with her Brother's or Sister's Daughter, is, we believe, gradually dying away amongst the more intelligent and reflecting classes of the community; and would, we believe, ere long disappear altogether, were it generally known that the Authorities of the Church have ceased to consider, that marriage in these cases is forbidden by the laws of God, and were the cases themselves withdrawn from our Table of Prohibited Degrees.

There is another ground upon which the removal of our restrictions upon the marriages in question has been opposed, with respect to which it may be right that we should say a few words. It has been stated that a Canon of our Church declares marriage to be incestuous and unlawful in any of the cases which are specified in our Table of Prohibited Degrees, and that this Canon is binding upon us. It may, however, be reasonably doubted whether the framers of the Canon intended to make such a declaration with respect to every case mentioned in the Table. If they did, the Canon would have been clearly unlawful, inasmuch as there was an Act

of Parliament in force at the period in which the Canon was promulgated, expressly declaring, that marriage in one of the cases specified in the Table was "just and lawful," and "*not* prohibited by the law of God." And it is clear from their concurrence in the Act of 5 and 6 William IV. c. 54, that the Heads of the Church in 1835 did not consider that the declaration of the Canon extended to three other cases mentioned in the Table; and, further, that they did not regard the Canon as obligatory upon themselves, or, instead of consenting to *confirm* the marriages which had been contracted with a Wife's Sister and with her Brother's or Sister's Daughter, they must have taken the necessary steps for *dissolving* them, the Canon in question being as follows:—"No persons shall marry within the degrees prohibited by the laws of God, and expressed in a Table set forth by authority in the year of our Lord 1563, and all marriages so made and contracted shall be adjudged incestuous and unlawful, *and consequently shall be dissolved as void from the beginning, and the parties so married shall by course of law be separated.**

* The Heads of the Church in 1835 may, perhaps, have considered, that a canon, which never had the sanction of Parliament, could not be pleaded in bar of any proposed act of the three Estates of the realm.

We have now gone through the chief objections which we have ever heard advanced against the removal of our restrictions upon marriage in the three cases we have specified ; and so slight appears to us to be their force that we cannot for a moment suppose that the Legislature will persevere in retaining the restrictions in question, on the ground of these objections to their removal, when so little can be said in vindication of the original imposition of them, and when there exist at the same time such cogent reasons for removing them.

It may be observed with respect to the first of these two points, that in no portion of the word of God, neither in the Old Testament nor in the New, do we find any thing to justify the prohibition of marriage in the three cases which have been mentioned ; *and we cannot but consider it very questionable whether the Legislature of a Christian country is at liberty to impose restrictions upon marriage for which it cannot shew the authority of Scripture.* All our early Acts of Parliament upon this subject proceed upon the presumption that the Legislature had this authority, and it is distinctly stated, that marriage was forbidden in certain cases, *only because it was considered to be forbidden in those cases by the laws of God.* The Stat. of 32 Henry VIII. enacts, *that all marriages "between lawful persons," that*

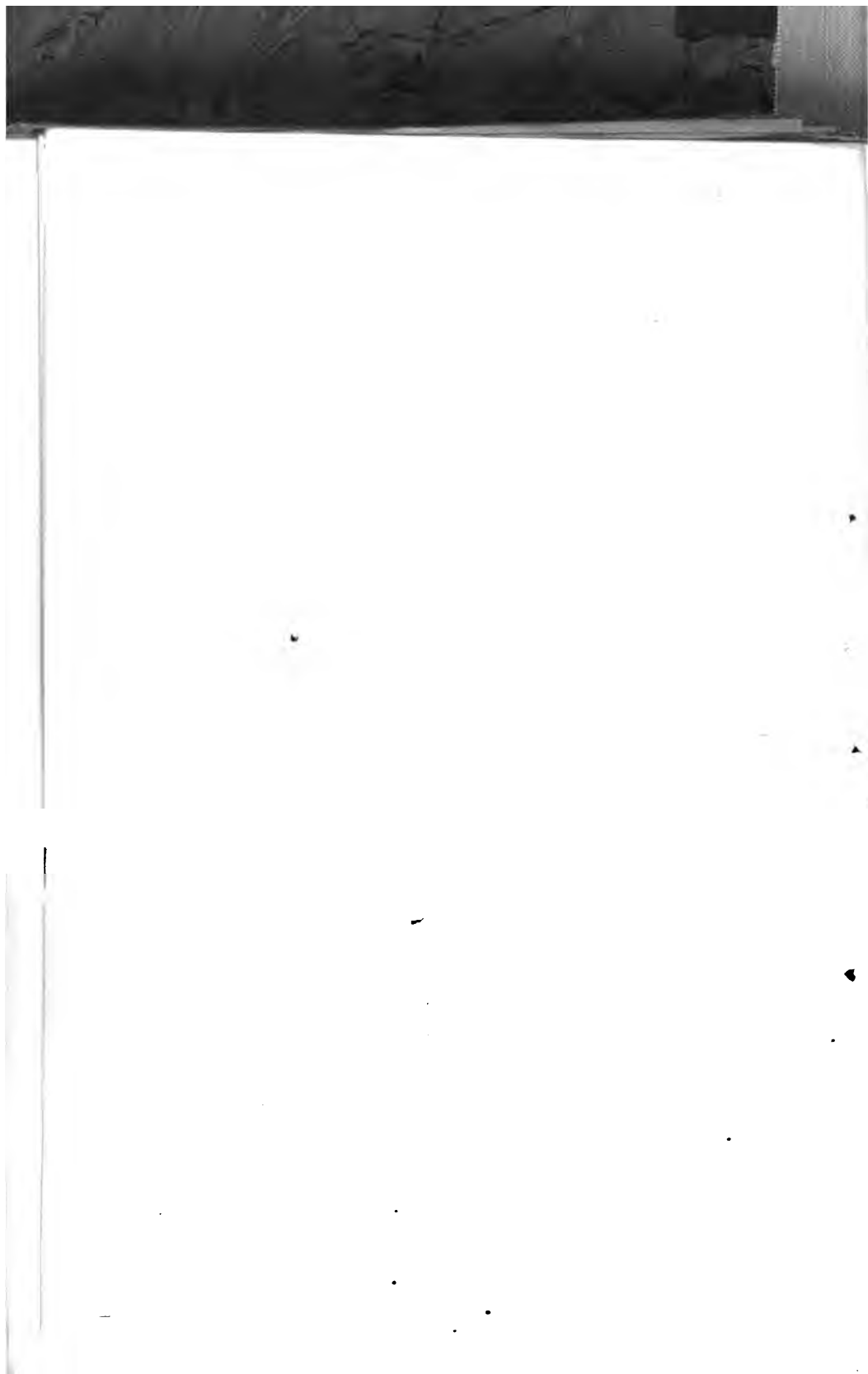
is, "*between such as are not prohibited by God's law to marry, shall be deemed, judged, and taken to be lawful, good, just, and indissoluble ;*" and the same Act adopts a tone of severe censure, when speaking of the employment of his usurped power by "the Bishop of Rome," in "unquieting" the subjects of this realm,—"*by making that unlawful, which by God's word is lawful, both in marriage and other things.*" Now we cannot but think, that the Legislature of this country is at this moment open to this very imputation, and that it is "unquieting" the subjects of the realm by making that unlawful in marriage, which by God's word is lawful ; *and we would venture to ask with all humility and seriousness, whether it can in such a case be considered to be free from sin in the sight of God.* In legalizing the marriages, which had been contracted in the three cases under consideration prior to the passing of the Act of 5 and 6 William IV, the Members of the Legislature gave conclusive proof, that they considered marriage in those cases to be "lawful by God's word,"—yet by that very Act they made it "unlawful," and continue so to consider it. Is this as it ought to be ? If God has left us free to marry in these cases, is *man* permitted to prohibit us from so doing ? If *HE* has uttered no word of censure with respect to these marriages, are *we*

at liberty to "write them sin or blame"? *Nothing certainly could justify the Legislature in so doing but the most conclusive reasons for believing, that the interests of morality absolutely require that marriage should be prohibited in these cases, and could not be protected if it were permitted.* Of this, however, we have no evidence whatever; whilst, on the other hand, it is notorious, that the existence of the prohibition upon marriage in these cases has been productive of a vast amount of anxiety, distress, and crime. It is well known that a large number of highly respectable persons in the middle classes of society, having become attached to the Sisters of their deceased wives, and being unable to contract marriage with them in England, have done so abroad, and have subsequently returned to this country, in which they are now living,—in a state, which the English Courts may not improbably sooner or later declare to be one merely of concubinage; whilst it is affirmed by Registrars and others best entitled to speak upon the subject, that the poor, especially in our large manufacturing towns, are perpetually disregarding the Act of Lord Lyndhurst, and are contracting a union, which they call marriage, but which is in fact no marriage at all, in one or other of the three prohibited cases we have specified. Thus

it has been, and thus we may reasonably fear that it will continue to be, to an increased extent. It has gone forth to the country as the deliberate opinion of the Legislature, evinced by a deliberate act, that marriage is not prohibited by the laws of God in the three cases under our consideration :—it is openly declared by many of the most distinguished members of both Houses of Parliament, that they will zealously support any measure for the removal of the restrictions, which at this moment exist upon marriage in these cases :—a Petition praying for such removal has, as we have already stated, been signed by many highly respectable clergymen ; and it would be unreasonable to suppose that the knowledge of these facts would fail to exercise considerable influence on the sentiments and practice of a large portion of the community in reference to this subject. If some amongst the rich, who may be desirous of contracting marriage in one or other of the cases in question should consider it to be their duty to refrain from so doing, we cannot but reasonably fear, that they may regard the prohibition which prevents them from carrying into effect the dearest wish of their hearts, as harsh and unjust, and that they may lose much of the regard, which they once felt, and which it is most desirable that they should continue

to feel, for the institutions of their country ; whilst others may not improbably seek a home in some foreign land in which these marriages are permitted, and the State may thus drive into temporary, or, it may be, into permanent exile, many of the most useful of its citizens. On the other hand, those amongst the poor, who may desire to form marriages of this kind, will in all probability in numberless instances follow the suggestions of their natural inclinations, and go through a *form* of marriage with the objects of their affections, or live with them without having done so ; and thus a spurious offspring will be entailed upon the country, and immorality in its worst form and evils of incalculable extent be the result of our present restrictions upon marriage in the cases we have been considering. Prudence then, no less than justice, calls for the removal of these restrictions. Reason does not suggest them :—Scripture does not enjoin them :—the practice of the Christian Church in its purest ages gives little countenance, if any, to the prohibition of marriage with a Wife's Sister ; whilst to the prohibition of it with her Brother's or Sister's Daughter, it gives no countenance at all :—moreover, we not only possess no proof that the interests of morality or the harmony of domestic life require the continuance of these restrictions, but we possess many powerful

reasons to warrant us in believing, that the removal of them would be unattended by any evil effects whatsoever ; whilst we are at the same time but too well able to prove, that they have produced, and are likely to produce, extensive unhappiness and still more extensive demoralization. Under these circumstances, we cannot doubt, that the Legislature will feel it right to remove these restrictions from our Statute Book ; and we believe, that every good man, and every prudent man—that every lover of justice, and every lover of his country, who has examined this subject with an unprejudiced mind and with the attention it deserves, will applaud the act, and welcome the day, in which the laws of England shall have ceased to prohibit marriage in cases in which the laws of God have left it free.



APPENDIX.

(A.) p. 2.

Remarks on Stat. 25, 28, and 32 Henry VIII.

A FEW observations on the events which led to the introduction of the above-mentioned Acts into our Statute Book, may not be found uninteresting. When Henry VIII was desirous of being separated from Katherine, the relict of his brother, Prince Arthur, in order, as is generally supposed, to unite himself to Anne Boleyn, he applied to the Pope for a divorce. The Pope being unwilling to offend the Emperor (Charles V) the Queen's Nephew, and at the same time, desirous of avoiding a rupture with Henry, delayed from time to time to give any decision upon the subject. In this state of the matter, it was suggested to Henry, who was much irritated by the procrastination of the Pope, to appeal to the Universities of the Continent and of England; and it was said by the advocates of this measure, that if these should pronounce that such a marriage as that which the King had contracted is forbidden by Scripture, he need not wait for a sentence of divorce from the Pope, but might at

once dissolve his marriage with Katherine on the authority of such a decision of the Universities. Now, marriage with a Brother's Widow could only be held to be forbidden by Scripture on the supposition that the Levitical Law, by which such a marriage was in ordinary cases forbidden to the Jews, (see Levit. xviii. 16), is binding upon Christians. It was therefore necessary for the King's purpose that the Universities should pronounce that the Prohibitions with respect to marriage, which are found in the 18th Chapter of Leviticus are of perpetual obligation; and to this decision they ultimately came. It is however to be observed, that there are the strongest reasons for believing, notwithstanding what Burnet has said to the contrary, that the acquiescence of the FOREIGN UNIVERSITIES in such a decision was purchased by large sums of money distributed amongst them by the agents of Henry. Cavendish, in his Life of Wolsey, says, that "the Foreign Universities were fed with such great sums of money, that they easily condescended to the requests of the Commissioners;" and Crook, the King's agent in Italy, writes, that he found "the greatest part of the Divines in all Italy mercenary," and tells Henry, that he "doubts not but all Christian Universities, *if they should be well handled*, would earnestly conclude with his Majesty," adding, that "if he had been in time *sufficiently furnished with money*, though he had procured, besides the seals which he then sent, 110 subscriptions, yet it had been nothing in comparison of what he might and easily would have done."

With respect to the ENGLISH UNIVERSITIES, it is to be remarked, that all accounts concur in stating that very great difficulty was experienced by the King in obtaining from them an answer favourable to his wishes. Wood tells us in his Annals (Book I. p. 43—46), that "had not the University (of Oxford) been overawed by the King's power, and threat-

ened as 'twere with ruin, they would never have consented with the King's desire, or with the opinions of other Universities," and that "notwithstanding the King's thundering letters, and all the intreaties used by his agents, his design would not have come to pass," but for a violent interference with the Statutes of the University. The difficulty experienced in obtaining a favourable answer from the University of Cambridge, appears to have been equally great, and the manner of extorting it at last very nearly the same. On the strength of these decisions of the Universities, the King, however, obtained a sentence of divorce from Katherine, and publicly espoused Anne Boleyn; and the first of the Acts which we have mentioned (25 Henry VIII c. 22) confirmed the sentence of divorce between Henry and Katherine, established the marriage with Anne, and settled the succession of the Crown on the King's heirs by that lady. In three short years the unfortunate Anne discovered that "favour is deceitful, and beauty vain," and, after being divorced from the King, perished upon the scaffold. On the day following the ruthless monarch married his third wife, the Lady Jane Seymour, and, soon after, an obsequious Parliament passed the second Statute to which we have referred (28 Henry VIII. c. 7). This Act, after extolling the condescension of Henry in again placing his neck under the yoke of matrimony "at the most humble petition of his nobles in this realm," declared, that both his former marriages were "void and of no effect" and that the issue of them was illegitimate, and enacted, that "the issue betwixt his Highness and Queen Jane should be his lawful children and heirs, and inherit according to the course of inheritance of the laws of this realm, the Imperial Crown of the same, with all dignities, honours, pre-eminences, prerogatives, authorities, and jurisdictions to the same annexed or belonging." The third Statute relative to marriage, to which we

have referred, is the 32nd Henry VIII. c. 38, intituled, "An Act concerning Precontracts of Marriage, and touching degrees of Consanguinity," and in this we detect the same selfishness of purpose on the part of the monarch, and the same regardlessness of principle and consistency on that of the Parliament, as in the two preceding Statutes. "This Act, (says Collier,) making Precontracts no good reason for breaking a marriage, drew a censure upon the King for parting with Queen Anne Boleyn upon this score. Some, it is possible, thought the King procured the passing this Bill to wipe off the blemish on Lady Elizabeth's birth, and to open a way to her succession to the Crown. For now the ground, upon which she was made illegitimate, was by implication declared unwarrantable. Another branch of this Act, allowing all marriages except in the degrees of Consanguinity and Affinity prohibited in Scripture, was supposed a provision for removing impediments against the King's marriage with Mrs. Catherine Howard. For this lady, being Cousin-German to Anne Boleyn, the nearness of the alliance would embarrass the King's design by the Canon Law."—(*Collier's Eccl. Hist.* Vol. II. p. 179, Folio Edit.).

(B.) p. 13.

*Additional Remarks on the Question of the Obligatory Power
of the Levitical Prohibitions with respect to Marriage
upon Christians.*

AN attempt was made at the time of Henry the Eighth's divorce from Queen Katherine, to prove, that the Levitical prohibitions with respect to Marriage are "of their own nature" moral, and therefore of universal obligation. The main argument in support of this notion was drawn from the language employed in the latter part of the xviiith chapter of Leviticus, in which, it was said, the marriages mentioned in the former part of the chapter are declared to be "abominations," by which the land of Canaan was defiled, and on account of which it was "spewing out" its inhabitants; and it was contended, that these assertions demonstrate that the unions in question must have been *essentially* immoral and incestuous, inasmuch as we have no reason to suppose that they were ever forbidden to the Canaanites by any positive law. This theory is open, however, to such formidable objections, that it has long since been given up as untenable by all the most judicious expositors of Scripture; and, we feel certain, that none but the very ignorant, or the very indiscreet, will ever attempt to revive it. It would oblige us to admit, that, prior to the Mosaic dispensation, several of the most highly-favoured servants of God contracted unions inherently sinful and unholy, when there was nothing in the state of the world to render the contraction of them either necessary or expedient; and our perplexity would only be

increased by discovering, that not only did such marriages pass without censure, but (as Ch. J. Vaughan has observed) "were prosecuted with the most signal benedictions and promises of God." We should thus become involved in the most painful difficulties with respect to the attributes of the Deity, the characters of some of the most devoted of his servants, and the essential and immutable distinctions between right and wrong, purity and defilement; and we could only extricate ourselves from these difficulties by plunging into others scarcely less perplexing, and maintaining, that what was *in its own nature* immoral and unholy, was not *always* so, and that a union, which was prosecuted with the blessing of God, by a people instructed in his will, and therefore aware of His aversion to it, became worthy of the name of incest and defilement, when it was contracted by the ignorant and uninstructed heathen! Nor are these the only difficulties in which the theory under consideration would involve us; for by turning to Deut. xxv. 5, we find that one of these unions, which it is contended were "abominations in the sight of God," was, under certain circumstances, strictly enjoined, *on grounds of mere social expediency*! An attempt has, indeed, been made to escape from this last-mentioned difficulty by means of a reference to the destruction of the Canaanites. It has been said, that the command of God alters the character of an action, and that as the Jews, acting under the divine direction, destroyed the Canaanites without incurring the guilt of murder, so might they in the same way, have contracted an incestuous marriage without incurring the guilt of incest. The cases, however, are by no means analogous, as might easily be shewn, were it necessary to do so, and the supposed explanation leaves the difficulty we have pointed out in full force. Under these circumstances we can entertain no doubt, that every unprejudiced and enlightened enquirer upon this subject

will be of opinion, with the most eminent divines of modern times, that the term "abomination" in the 27th and 29th verses of the chapter before us, is to be referred especially to the sins mentioned in verses 7—9 and verses 20—23; and that several of the marriages mentioned in the early part of the chapter are not in their own nature immoral, but were prohibited to the Jews only because they were about to be placed in such circumstances that the power to contract them might have been the means of introducing immorality into their families.* And, as the prohibitions of such marriages were delivered by Moses to the Jews only, and have not been bound on Christians by the New Testament, they surely can oblige us no more than do other laws of the Jews concerning other subjects, which are not of their own nature moral; and it is especially worthy of remark in reference to the point under consideration, that the early Christians were of this opinion, and did not consider the Levitical prohibitions as obligatory upon themselves. Moreover, according to Jeremy Taylor, the continued obligation of these prohibitions was admitted in scarcely any Christian country prior to the time of Henry the Eighth's divorce from his brother's widow. In speaking upon this very point, Taylor writes as follows;—"All those degrees in which Moses' law hath forbidden marriages, are supposed by very many now-a-days, that they are still to be observed, with the same distance and sacredness, affirming, because it was a law of God, with the appendage of severe penalties to the transgressors, it does still oblige us Christians. This question was strangely tossed up and down, upon occasion of Henry the Eighth's divorce from Queen Katherine, the relict of his brother, Prince Arthur; and, according as the interest of princes uses to do,

* See Bishop Kidder on *Levit. xviii. 27*, and Bishop Patrick on *Levit. xviii. 26*.

it very much employed and divided the pens of learned men, who, upon that occasion, gave too great testimony *with how great weaknesses men that have a bias do determine questions, and with how great a force a King that is rich and powerful can make his own decisions.* For, though Christendom was then much divided, yet before then there was almost a general consent upon this proposition—**THAT THE LEVITICAL DEGREES DO NOT BY ANY LAW OF GOD BIND CHRISTIANS TO THEIR OBSERVATION.**"* It cannot surprize us to discover that the doctrine of the continued obligation of the Levitical prohibitions, which had been advanced in the reign of Henry VIII. should have been revived in that of Elizabeth. The lawfulness of the divorce between Henry and Katherine had been grounded entirely on the doctrine, that the prohibitions in Leviticus (by one of which marriage with a Brother's Widow was in ordinary cases forbidden to the Jews) are binding on Christians. If this doctrine had been considered to be incorrect, the plea upon which Henry's marriage with Katherine was annulled, must have been held to be unsound—the marriage must have been regarded as having been good and valid from the beginning, and the marriage with Anne Boleyn, contracted in the lifetime of Katherine, must have been pronounced illegal, and Elizabeth, the offspring of it, illegitimate. It was, then, of vital consequence to Elizabeth,—to the establishment of her legitimacy, and consequently of her right to the throne, that the perpetual obligation of the Levitical prohibitions should be inculcated, and admitted by her subjects. It may, perhaps, at first sight, appear remarkable that no resistance should have been offered to the 'Admonition' originally prefixed to Archbishop Parker's Table, implying, if not distinctly asserting, that marriage was forbidden by scripture in the

* *Ductor Dubitantium*, Book 2, C. 2.

several cases mentioned in it, when, according to Jeremy Taylor, there were few, if any, who admitted the obligatory power of the Levitical prohibitions. The nature of the case, and the character of the Sovereign, sufficiently account, however, for the absence of all opposition to the promulgation of such a doctrine. It was the interest of her subjects that the legitimacy of Elizabeth should not be questioned; and nothing could be so likely to prevent this as the general reception of the doctrine implied in the 'Admonition' prefixed to Archbishop Parker's Table: moreover, the dire vengeance which "the Royal Lioness" was accustomed to take on those who opposed her will was well known, and may have had considerable effect in keeping men silent.

At a subsequent period the learned and excellent Dr. Hammond, in treating on the subject of Marriage with a deceased Wife's Sister, distinctly admits, that the prohibition of such a union (which, he thinks, is found in the xviiith chapter of Leviticus by means of the doctrine of parity of reason,) would have been no more obligatory on Christians "than other judicial laws, which were by God also given to the Jews," had it not been that this law was in the beginning given by God to the sons of Adam, "and thence by tradition to the sons of Noah, as those that represented all the nations of the world." The giving of this law to the sons of Adam and Noah, of which he candidly admits we find no account in scripture, he tells us we are bound to admit, *because it is one of the traditions of the Jews*,—which same traditions, it is painful to be obliged to add, he had more than once, in the course of his Treatise, rejected as unreasonable and absurd, when they happened to be opposed to his own opinions.

(C.) p. 24.

Additional Remarks on Leviticus XVIII. 18.

To the Septuagint and Vulgate versions of Levit. xviii. 18, which have been already given, we here add, from Walton, a Latin translation of the Syriac, Chaldee, and Samaritan versions of the passage :—

Et uxorem supra sororem suam ne duxeris, neve affixeris eam, et detexeris turpitudinem ejus super ipsam *dum adhuc vivit.*
(*Translation of the Syriac version.*)

Et uxorem cum sorore suâ non accipies, ut sit ei in tribulationem; nec discooperies turpitudinem illi, *illâ vivente.*
(*Translation of the Chaldee paraphrase.*)

Uxorem quoque cum sorore suâ non accipies in afflictionem, revelando turpitudinem ejus super eam, *adhuc ipsâ vivente.*
(*Translation of the Samaritan version.*)

Judging of the sense of the passage under consideration from any one of the above versions of it, it appears to prohibit marriage with a Wife's Sister, *only during the life of the wife*; and we cannot conceive it possible for any person, unless under the influence of inveterate prejudice, to deny, that the prohibition is expressed in such terms as to render it almost unavoidable to infer from it the perfect lawfulness of the marriage in question, *after the wife's death.* St. Basil, however, whilst he admits that the verse is to be understood as a prohibition of marriage with a Wife's Sister in the life-time of the wife, argues strenuously against the propriety of our inferring from it that such a marriage may be lawfully contracted after the wife's decease. "We are

asked" (he says) "whether it is written that we may marry a woman after the death of her sister. We answer, as we can do with safety and truth, that this is not written. But to determine the sense of that which is past over in silence by inference from what is expressed, is the part of the legislator, not of him who is declaring the injunctions of the law: since, if this were permitted, it would be in the power of him, who might be desirous of doing it, to venture upon taking the Sister even during the life of his Wife. For the very same kind of fallacy suits this case also: 'For it is written (says this man,) Thou shalt not take her to excite jealousy, so that the lawgiver does not prohibit taking her if no jealousy is excited.' He, therefore, who pleads the cause of passion, will affirm that the Sisters are not of a jealous disposition. The ground therefore being removed, on which the Legislator prohibited the simultaneous marriage of the two Sisters, what should prevent us from marrying them? But we shall reply, This is not written. Nor is the former determined. But the conclusion suggested by inferences affords a licence equally to both cases. (Basil: Op.: Tom. III. p. 361. Ed. Paris. Ep. ad Diodorum.)

We are strongly disposed to think, that, if this reasoning had come down to us from an anonymous author, it would have been considered as but little better than quibbling; and we cannot but regard it as utterly unworthy of the subject, and indicative of any thing but candour on the part of the writer. St. Basil had before him a passage of Scripture, from which an unprejudiced reader can scarcely avoid inferring the lawfulness of marriage with a deceased Wife's Sister, but he is highly indignant at our drawing such an inference from the passage, although there is nothing in the context when fairly interpreted to prevent us from so doing, because (as he tells us,) it is possible to draw from the passage another inference, *which is at once seen to be an*

untenable one. Surely this is to cavil, not to comment; and to reject a doctrine which appears to be most clearly suggested by the language of Scripture, because it is opposed to our own preconceived notions. Moses, in obedience to the divine command, enjoined his countrymen to abstain from marriage with certain relatives, whom he specified. Nothing was said with reference to time or circumstance. "The nakedness of thy father's wife shalt thou not uncover." "The nakedness of thy sister, thou shalt not uncover," &c. From such marriages the Jew was commanded to abstain altogether, not only during his Wife's life (if he were married), but also after her death. Last of all came the prohibition under consideration: "Neither shalt thou take a Wife to her Sister, to vex her, to uncover her nakedness, beside the other, in her life time." Now if these words had been intended to prohibit marriage with a Wife's Sister, not only during the Wife's life, but also after her death, why should any thing have been said in reference to the Wife's 'life-time?' Surely in such a case the prohibition would have resembled in form all the preceding ones, and would have run thus: 'The nakedness of thy Wife's Sister shalt thou not uncover.' But instead of this, the prohibition is spoken of as being contemporaneous in operation with the existence of the wife, and unless the Jews were at liberty to marry a Wife's Sister, after the Wife's death, we see not how it would be possible to avoid admitting that the addition of the expression *בְּיָמֶיהָ* ('in her life time') was not merely superfluous, but calculated to mislead the best disposed of those, to whom the prohibition was addressed, with respect to the sentiments of the lawgiver upon the point under consideration. We doubt not therefore, that the Israelite was free to draw the inference, which the form in which the prohibition was delivered must naturally have suggested to him, and that he did not act in opposition to the divine will in

marrying his Wife's Sister, after his Wife's decease. St. Basil asserts, indeed, with an air of triumph, that it is not written 'that we may marry a woman after the death of her Sister.' This is true; nor is it written that we may contract many other marriages, which, however, none but 'the Bishop of Rome' ever thought of prohibiting. *It is for those who deny marriage with a Wife's Sister as anti-scriptural, to shew a prohibition of it; and it is by no means necessary, that we should be able to produce a written permission to contract such a marriage.* When, however, our adversaries tell us, that because marriage is prohibited in Scripture with a Brother's Widow, it is prohibited also, by parity of reason, with a deceased Wife's Sister; we deny the correctness of the conclusion, and assert, that marriage with a *living* Wife's Sister is prohibited in Scripture in such a manner as to render it all but unavoidable for us to believe, that marriage with a *deceased* Wife's Sister is lawful. And if, for this interpretation of the verse we are considering, we have not the sanction of St. Basil, (who, be it remembered, lived in a period, not of 'supposed,' but of real asceticism, and who looked with no kindly feelings upon *any* second marriage,) we can, at all events, plead the authority of the great body of the Jewish people from the earliest period at which we are acquainted with their opinion upon the subject to the present moment, and of a large majority of the most eminent commentators of modern times. Fagius, in his gloss upon the verse, writes as follows:

Etai in lege Mosi polygamia concessa fuit, tamen non licuit duabus simul sororibus jungi, ne videlicet altera alteram perpetuo affligeret: quod in conjugio Jacobi patriarchæ factum est. Est igitur sensus: ne accipias mulierem aliquam pro uxore cum sorore ejus, ut affligas eam concumbendo cum sorore ejus, præsentē sive viventē eā uxoris sorore: nam uxoris demortuæ sororem ducere licebat: q. d.

Duas sorores simul non ducas in uxores : uxore tamen tuâ mortuâ sororem ejus ducere poteris.

(Fagius in loc.)

To the same effect writes also Vatablus. So also De Lyra.

In commenting on the words 'Sororem uxoris tuæ in pellicatum, &c., Grotius writes thus:—

'*Pellicem* hic impropriè sumit pro alterâ conjuge, quam Græci hic feliciter ἀντίζηλον vocant. Jacobo id male cesserat. Sic ut acerrima dicuntur esse fratrum odia, sic et æmulationes sororum. Reprehendit hic Pesictha non immeritò Caraitarum sententiam, qui volebant vetari hic duas habere eodem tempore uxores, quia *soror* sæpe apud Hebræos alterum aliquid ejusdem generis significat. Eamque sententiam et nostro sæculo renovarunt viri non ineruditi, nempe quia nolunt quicquam in Evangelio esse vetitum quod in Lege licuerit : quibus refellendis sufficient quæ dicta in L. 2 De J. B. ac P. c. 5 § 9. Lex in Deuteronomio satis clara est, plures uxores permittens. Accedit optima legis interpret consuetudo.

(Grotius in loc.)

Calmet, speaking of this verse, says:—Ce texte, exprimé de cette manière, marque qu'il n'est pas permis d'avoir pour femmes les deux sœurs *en même-tems*, comme Jacob eut Rachel et Lia, *mais seulement successivement* ; et c' est le sens qui paroît le plus clair et le plus probable.

(Calmet, Comment. Lit. : in loc.)

It is to be observed, however, that the Karaites, a sect which appears to have sprung up amongst the Jews in the 7th or 8th century of the Christian æra, disregarding the authority of the whole Jewish nation up to that period, assigned to the passage of Scripture under our consideration a different sense from that which had been previously put upon it, and understood it as a prohibition, not of simultaneous marriage with two Sisters, but of Polygamy. This inter-

pretation of the passage was adopted by Tremellius and Junius (whose translation of the Old Testament appeared towards the end of the 16th century,) and, amongst ourselves, by Willet and Hammond. It is said by these critics, that the words

אִשָּׁה אֶל-אֶחְוָתָהּ
(*ishah el akhothah*)

signify in all the other passages of the Old Testament in which they occur, not 'a Wife to her Sister,' but 'one thing to another of the same kind;' as in Exod. xxvi. 3, where it is said that the five curtains shall be coupled together '*ishah el akhothah*,' i. e. 'one to another;' viz. one curtain to another. And these words are said to be used in the same sense in Exod. xxvi. 5, 6, 7; and in Ezek. i. 9, 11, 23. Under these circumstances the above mentioned writers contend that these words are to be interpreted in the same manner in the passage before us, and should be rendered, not 'a Wife to her Sister,' but

'a woman to a woman,'

i. e. 'one woman to another.'

And the verse, instead of being a prohibition of the marriage of two Sisters at the same time, becomes a prohibition of Polygamy. Before, however, we adopt this interpretation of the above words, we must consider,

1. That the Jews generally did not understand them in this sense, but assigned to the verse exactly the same meaning as that which we have conceived it to bear. See the passage in Maimonides referred to by Ainsworth in his note on this passage. See also the valuable note of Drusius.

2. It ought also to be considered, that the Seventy were clearly of opinion that the words '*ishah el akothah*' were to be understood in their literal signification in this passage, having rendered the verse as follows:—

Γυναῖκα ἐπ' ἀδελφῇ αὐτῆς οὐ λήψῃ ἀντίζηλον, κ. τ. λ.

And the fact that the Seventy understood the words '*ishah el akhothah*' in a literal sense in the passage before us, is the more worthy of attention, in consequence of their having considered them to have been used figuratively in the other passages of the Old Testament in which they occur, where they have rendered them by *ἐτέρᾳ τῇ ἐτέρᾳ, ἀλλήλαι εἰς ἐκάσην*, or some similar phrase.

3. We ought to consider further, that if the words '*ishah el akhothah*' are taken in the sense assigned to them by the Karaites, and the verse is understood as a prohibition of polygamy in general, we shall make Moses inconsistent with himself; for, as Michaelis has truly observed, 'how much soever some have denied it, nothing is more certain than that by the civil laws of Moses, a man was allowed to have more wives than one.' And not only so, but we shall find ourselves involved in the most painful difficulties with respect to several other passages of Scripture, and the practices of some of the most highly esteemed characters under the Old Dispensation.

These or similar considerations have prevented almost all our own commentators from adopting the novel sense, assigned to this passage by the Karaites, and for awhile embraced by several foreign critics; and we believe that it has long been given up as untenable by all the most approved Biblical scholars of our own and other countries. Bishop Kidder, in noticing our marginal reading 'one wife to another,' writes as follows:—

'We are not to understand these words as if Polygamy were here forbid. For that it was not is evident from the practice of the Israelites which passeth without reproof. And, therefore, though the marginal reading be such as the original abstractly considered will bear, yet the subject matter requires that we take the word *Sister* in the common

acceptation of it, and then is an Israelite forbid to take his Wife's Sister while that Wife is living.'

(*Bp. Kidder's Commentary on the Five Books of Moses.*)

Bishop Patrick also rejects the attempt to put such an interpretation on the verse as would convert it into a prohibition of Polygamy in general, and considers it merely as forbidding simultaneous marriage with two Sisters. 'There are a great many eminent writers' (he says) 'who, following our marginal translation [one wife to another], imagine that here plurality of wives is expressly forbidden by God. And they think there is an example to justify this translation in Exod. xxvi. 3. where Moses is commanded to take care the five curtains of the tabernacle are coupled together, "one to its sister," (as the Hebrew phrase is) i. e. one to another. And so the Karaites interpret this place: that a man, having a wife, should not take another while she lived; which, *if it were true*, would solve several difficulties; but there are such strong reasons against it, that I cannot think it to be the meaning. For as more wives than one were indulged under the law, so they were after. And Moses himself supposes as much, when he provides, a man should not prefer a child he had by a beloved wife before one by her whom he hated, if he was the eldest son; which plainly intimates an allowance in his law of more wives than one. And so we find expressly their kings might have, though not a multitude (Deut. xvii. 17.) And their best King, who read God's law day and night, and could not but understand it, took many wives without any reproof: nay, God gave him more than he had before, by delivering his master's wives to him (2 Sam. xii. 8.) And besides all this, Moses speaking all along in this Chapter of Consanguinity, it is reasonable (as Schindlerus observes,) to conclude he doth so here: not of 'one woman to another,' but of 'one sister to another.' There being also the like reason to understand the word

'Sister,' properly in this place, as the words 'Daughter and 'Mother' in others, (v. 17, and xx. 14,) where he forbids a man to take a 'woman and her daughter,' or 'a woman and her mother,' as Theodoric Hackspan judiciously notes. *Disput. i. de Locutionibus Sacris. n. 29.* (See *Selden de Jure Nat. et Gent. Cap. VI. and Buxtorf de Sponsal. pp. 28, 29.*) The meaning therefore is, that though two wives at a time, or more, were permitted in those days, no man should take *two sisters* (as Jacob had formerly done) begotten of the same father, or born of the same mother, whether legitimately or illegitimately, as the forenamed *R. Levi* expresses it, (*Præcept. ccvi.*)

Patrick, however, although he rejects the attempt to put such an interpretation on the verse, as would convert it into a prohibition of Polygamy in general, and considers it as forbidding merely simultaneous polygamy with two sisters, contends, against the inference, which is naturally suggested by it, when taken in this sense. In commenting on the words, 'in her life time,' he writes as follows: "From hence some infer, that a man was permitted to marry the sister of his former wife, when she was dead. So the Talmudists; but the Karaites thought it absolutely unlawful, as Mr. Selden observes, (*Lib. I. de Uxore Hebr. Cap. IV.*) For it is directly against the scope of all these laws, which prohibit men to marry at all with such persons as are mentioned, either in their wives' life-time or after. And there being a prohibition (ver. 16.) to marry a brother's wife, it is unreasonable to think Moses gave them leave to marry their Wife's Sister."

It may have appeared 'unreasonable' to Bishop Patrick, that Moses, after prohibiting marriage in ordinary cases with a Brother's wife in ver. 16, should have permitted marriage with a Wife's Sister in ver. 18, but that he did so appears all but certain; and many reasons may have existed

for his making a distinction between these two cases, though Bishop Patrick was unacquainted with them. What 'the Karaites may have thought upon the subject, is a matter of no great importance.

Scott also conceives that the words, '*ishah el akhothah*, are to be taken literally in this passage, and like Patrick, considers the verse as prohibiting the marriage of two Sisters at the same time. "Some think, (he says,) that this verse contains an express prohibition of polygamy, supposing the word 'Sister' merely to signify a wife, which the person spoken of had already married. But though the Mosaic law contains no explicit allowance of polygamy, yet there is no other passage which favours the interpretation of this text as a direct law against it, and many things in the whole subsequent history imply a connivance at it. The context also seems to suggest a more literal interpretation, viz. *the marrying of two Sisters together*. This conduct in Jacob proved a source of vexation both to Leah and Rachel, who were more jealous of each other than of the handmaidens whom they willingly gave to their husband; and perhaps it would be found on trial, that those who before had lived together in the intimate equality of this near relationship, would be more apt to rival each other, if married to the same man, than strangers would be; at least their jealousies and bickerings would be more unseemly and distressing."* The subsequent portion of Scott's note on this passage appears to us to furnish a painful instance of want of candour in one, who was in general a very candid, as well as a very able and pious expositor of Scripture. "As a woman (he adds,) might not in ordinary cases marry the Brother of her deceased Husband, it can hardly be supposed that it was allowed for a man to marry the Sister of his Wife even after her decease;

* Scott Note on *Levit. xviii*, 15.

though this verse seems not to contain a prohibition of it." So far indeed from 'seeming to contain a prohibition' of marriage with a deceased Wife's Sister, this verse according to Scott's interpretation of it, which we believe to be the correct one, contains a clearly implied permission to the Jews to contract such a marriage; and it appears to us evident that Scott felt that it did, but was prevented from admitting it by regard for the authority of the Church to which he belonged, which had given its sanction to the notion, that, because marriage with a Brother's Widow is prohibited by the 16th verse of the xviiith of Leviticus, it is prohibited also 'by parity of reason' with a deceased Wife's Sister.

We close our observations on Levit. xviii. 18, with the following remarks from Michaelis:—

"Marriage with a deceased Wife's Sister (says this great writer,) he (sc. Moses) permits, but prohibits on the other hand the marrying two Sisters at once. The words of the law (Levit. xviii. 18) are very clear: 'Thou shalt not take a wife to her sister to be her rival, and to uncover her nakedness *along with her's* in her life time.' After so distinct a definition of his meaning, and the three limitations, added:—

1. As to the one being the other's rival—to express which we may observe by the way, that the same word is used as in 1 Sam. i. 6. where two wives have but one husband; and in Arabic it is found in the same sense:

2. As to the man's uncovering the nakedness of both; and

3. As to his doing so in the life-time of the first, I cannot comprehend how it should ever have been imagined that Moses also prohibited marriage with a deceased Wife's Sister,—that very connection which we so often find a dying wife entreating her husband to form, because she can entertain the best hope of her husband's welfare from it. And in a note on this passage the author adds: "The reason why

marriage with a deceased Wife's Sister has been so generally understood to be forbidden, is, that Moses has prohibited marriage with a Brother's Widow ; and Expositors, in order to have it in their power to draw inferences from other prohibitions, have maintained, that he not only prohibits the particular marriages specified in his law, but also those equally near in point of relationship. Now, because it was an insurmountable objection to this doctrine of DEGREES, that Moses permitted marriage with a Wife's Sister, and prohibited it with a Brother's Widow, *they found it necessary to pervert entirely, notwithstanding its perfect cleanness, the meaning of this precept :—to convert it into a general prohibition* of Polygamy, and, in contradiction to the style of all the marriage laws, to understand the word ' Sister,' not of the relation properly so called, but of any woman whatever, not at all related to the wife.**

* Michaelis on the Laws of Moses. Vol. II. pp. 112, 113.

(D.) p. 42.

Brief Sketch of the Restrictions upon Marriage which have been in force in different periods of the Church.

THE first Council in which this subject appears to have been discussed was that of Eliberis, which was assembled A. D. 305, and which enjoined five years' penance to the man who married his Wife's Sister.*

The Council of Neo-Cæsarea (A. D. 314.) ordered, that the woman who married two Brothers should remain excommunicate to the day of her death.†

The Council of Agde (A.D. 506) prohibited marriage with a Brother's Widow, with a Sister, with a Step Mother, with a Cousin-German, with a Maternal Uncle's Widow, with a Wife's Daughter by a former husband, with a near relative by Consanguinity; and with a near Kinsman's Widow.‡

The Council of Epone (A. D. 517) repeated these prohibitions.||

The Second Council of Tours, (A. D. 567) also repeated the prohibitions of the Council of Agde.§

Gregory III. (A. D. 731.) extended the prohibitions of marriage to the *seventh* degree of relationship.¶

* *Labbé I. p. 977.*

† *Id. I, p. 1481.*

‡ *Id. IV. p. 1393.* || *Id. IV. p. 1580.* § *Id. IV. p. 1863.*

¶ *Id. VI. p. 1469.*

Zachary, who is described in the Life given of him in Labbè as a man of remarkable mildness and suavity, (*vir mitissimus atque suavis*), seems to have considered that Gregory had but trifled with the subject, and (A. D. 740) forbade marriage in every case in which any relationship, however remote, could be traced between the parties; and moreover applied the prohibition to the spiritual relationship acquired by Sponsors at Baptism, assuring us with the utmost gravity, that the only reason why neither Fathers, Councils, nor Emperors had forbidden marriage between parties, connected by the last mentioned kind of relationship, was, that they had looked upon it as such an exceedingly heinous sin, that they had actually been afraid to say a word about it.*

The fourth Council of Lateran, (A. D. 1215.) at which were present the Pope (Innocent III), the Patriarchs of Constantinople and Jerusalem, 412 Bishops, and Abbots and others in great numbers, appears to have considered the regulations of Pope Zachary as somewhat too severe; and decided, that the prohibitions of Marriage should extend only to the *fourth* degree of relationship; and seems to have been of opinion that there was great reason to consider this decision to be correct in the fact, that the body, which consists of four elements, *has four humours in it*. (*quia quatuor sunt humores in corpore, quod constat ex quatuor elementis*. Concil. Lateran, IV. Cap. 50.)†

We are not aware that it had occurred to any one to extend the Levitical prohibitions, by the aid of the doctrine of 'parity of reason,' till the sixteenth century, when this mode of multiplying the scriptural restrictions upon marriage was adopted by the framers of our Table of Prohibited Degrees,

* *Labbé VI. p. 1512.*

† *Id. XI. p. 201.*

and we have, in consequence of it, a list of prohibitions upon this subject unlike that which is found in Leviticus,—unlike that of the Christian Church at any period in the first six hundred years of its existence,—unlike that of the Karaites, whose interpretation of the Levitical prohibitions we have been sometimes reported to have followed,—and, last of all, we believe, unlike the list which is followed in any other Christian country.

THE END.

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